

Mayeuddi and ors. Vs. Mahammad Razzab Ali and ors.

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Court : Kolkata

Decided On : Dec-01-1926

Reported in : AIR1927Cal457

Appellant : Mayeuddi and ors.

Respondent : Mahammad Razzab Ali and ors.

Judgement :

1. The plaintiffs who are the lessees from one Kiran Babu, the purchaser of an estate at a revenue sale, brought the present suit for recovery of possession of the lands in suit on the ground that they formed parts of the estate. The defence was that the lands were not part of the estate purchased by Kiran Babu, namely, Estate No. 3842 of the Backergunj Collectorate but of the 'Remainder' as shown in the thak map. They also pleaded limitation. There were various other points raised which need not be considered in this appeal as they have not been pressed. It appears that the estate was sold in 1888. In 1899 Kiran Babu sued the Defendants Nos. 1 to 19 and others for khas possession and took delivery of possession through Court on the 9th April 1907. It has been found by the learned District Judge that Kiran Babu remained in possession thereafter for a period of 15 days and was then dispossessed by all the defendants in this suit.

2. This suit was brought on the 10-4-1919, and it is, therefore, in time. But it is argued by the learned vakil appearing for the appellants that so far as Defendants Nos. 20 and 21 are concerned the plaintiffs' suit is barred against them. These

defendants are the co-sharers of the other defendants and they had an interest in the howla as well having inherited it from their common ancestor. In the suit Kiran Babu brought in 1899 these defendants were not made parties and, therefore, it is submitted that it must be presumed that they were in possession in 1907 when Kiran Babu took possession of the land and so the plaintiffs or their lessors were not in possession of the lands in suit as against them within 12 years. The finding of the Court below, however, does not support this contention. The learned District Judge found that Defendants Nos. 20 and 21 were not in actual possession at the time when the suit of 1899 was brought and that they came for the first time on the lands when Kiran Babu was dispossessed 15 days after he had obtained possession.

3. But it is contended that the Defendants Nos. 20 & 21 might not have been in actual possession in 1907 but they were in possession through the other defendants, their brothers, and since the decree was not obtained against them it must be presumed that their possession continued up to the date of the institution of this suit. This argument appears to us to be fallacious. If the Defendants Nos. 20 and 21 were in possession of the land in suit through their brothers, the dispossession of their brothers must be their dispossession as well. It cannot, therefore, be said that while their brothers were dispossessed they remained in possession. The finding of the learned District Judge, however, that they came for the first time to this land at the dispossession of Kiran Babu does away with the theory about these defendants being in possession at the time of the suit of 1899. The decision with regard to the question of limitation, therefore, must be upheld on the finding arrived at by the Court below.

4. Then with regard to the question of title. The learned District Judge has, found that the thak map which shows that the lands in suit were not included in Estate No. 3842 but were part of the; 'Remainder' is not in the circumstances of the present case correct. Both the Courts have relied upon the record of rights and the documents put in by the defendants themselves showing that the lands in suit were included in Estate No. 3842 and also upon the admission by the defendants that since the thak map the proprietor of Estate No. 3842 was in-possession of all the disputed lands as part of that estate. On a consideration of the entire evidence

the Courts below are of opinion that the thak map cannot be considered to be correct in the face of the other evidence on the record. The procedure and the law adopted by them in considering the value of the thak map are quite consistent with those laid down in the case of Jagadindra Nath Boy v. Secretary of State [1903] 30 Cal. 291 where their Lordships of the Judicial Committee say that thak maps are not conclusive and may be shown to be wrong. Their Lordships further observed that in every case the question what lands are included in the Permanent Settlement of 1793 is a question of fact and not of law. The Courts below as Courts of fact are entitled from the evidence on the record to draw the inference that these lands form part of the Estate No. 3842 at the time of the Permanent Settlement. This is a finding of fact with which we cannot interfere.

5. This appeal accordingly fails and is dismissed with costs.

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